



## Decision Memo

### Fall Creek Fish Passage Barrier Installation and Diversion Structure Modification Project

U.S. Forest Service  
Pagosa Ranger District, San Juan National Forest  
Mineral County, Colorado

This decision incorporates all information in this document and included in the project file.

#### Decision

I have decided to authorize the activities described in the "Proposed Action" section, including any modifications that resulted from environmental analysis and review of regulatory compliance.

#### Applicable Categorical Exclusion and Findings Required by Other Laws

The "Applicable Categories" section identifies the appropriate category/categories for this action, and provides rationale for categorically excluding this action from documentation in an environmental assessment (EA) or environmental impact statement (EIS) and for using the identified category/categories. The "Environmental Analysis" section documents rationale to support my finding that no extraordinary circumstances exist, along with findings required by other applicable laws and regulations to demonstrate compliance with the regulatory framework for the activities authorized by this decision.

#### Agencies, Organizations and Persons Contacted

A list of

Agencies, Organizations and Persons **Contacted** regarding this proposal is provided, along with a brief overview of comments/feedback received and how they were considered.

#### Implementation Date


I intend to implement the decision immediately upon the signature of the Decision Memo.

#### Administrative Review

Decisions that are categorically excluded from documentation in an environmental assessment or environmental impact statement are not subject to an administrative review process (Agriculture Act of 2014 [Pub. L. No. 113-79], Subtitle A, Sec. 8006).

#### Contact

Clay Kampf Fisheries Biologist, clayton.kampf@usda.gov, 970-884-1403

  
Joshua P. Peck  
District Ranger

May 27, 2021



## Categorical Exclusion Review

### Project Information

**Proposal Name:** Fall Creek Fish Passage Barrier Installation and Diversion Structure Modification Project

**Proposal Date:** April 2021

**Project Contact:** Clay Kampf

**Responsible Official:** Joshua Peck, District Ranger

**Unit:** San Juan National Forest

**Ranger District:** Pagosa Ranger District

**Counties:** Mineral

**State:** Colorado

**Anticipated Implementation:** Fall 2022

**Signing Authority:** District Ranger

**Public web link:** <https://www.fs.usda.gov/project/?project=59955>

**General Location:** Fall Creek on the east side of the Pagosa Ranger District

**Applicable Management Areas:** Management Area 4 High Use Recreation Emphasis

**Legal Description:** 37 N R1E Section 16

**Elevation Range:** approximately 8,000 feet

**Watersheds:** Wolf Creek

### Applicable Categories

This proposal is categorically excluded from documentation in an environmental assessment or environmental impact statement because it fits the following category or categories, pending extraordinary circumstance determinations:

**Applicable Category or Categories:**

36 CFR 220.6(e)(7) (DM Required)

36 CFR 220.6(e)(3) (DM Required)

These categories are applicable for this project because the modification of stream aquatic habitat will be done using normal practices (for category (e)(7)) and is a modification of a minor special use of NFS lands occurring on less than 20 acres (for category (e)(3)).

### Proposed Action

**Fish Barrier Installation:** The proposed action would create a physical barrier (waterfall) approximately 6 feet high between pure San Juan Lineage Colorado River cutthroat trout (SJCT) and non-native trout species that currently have free passage upstream in Fall Creek. The fish barrier will be approximately 200 feet upstream from the existing diversion where a natural 3-foot drop in the stream occurs to limit the amount of stream work needed. Management of fish and wildlife associated with this project is the purview of the State of Colorado and not part of this proposed action.





***Diversion Structure Modification:*** The SJNF will work cooperatively with the Bruce Spruce Ditch water right Holder and The National Resource Conservation Service (NRCS) to modify the diversion structure in Fall Creek at the Bruce Spruce Ditch Diversion. Heavy equipment consisting of a large track hoe, 10 wheel dump and flatbed trucks, cement delivery trucks and associated small support vehicles will access the site beginning at the closed West Fork Campground, including a short cross country trail to the motorized access route currently used to access the Bruce Spruce Ditch Diversion. Work will occur during the low flow period of the year in late summer or fall and will be completed in approximately 14 days or less. Approximately 15 merchantable trees will need to be removed to facilitate construction activities. Ground disturbing work will include widening the access route and removing some tree stumps where necessary to accommodate larger equipment. Temporary access routes may need to be created; however, all disturbance would occur within the 4 acre project footprint as shown on the attached map. All temporary roads and access routes will be ripped and reseeded after construction is complete. Final grading of the stream banks will be implemented to reduce erosion. Banks will be revegetated with appropriate grass seed and willows, and erosion control matting and wattles will be used where needed.

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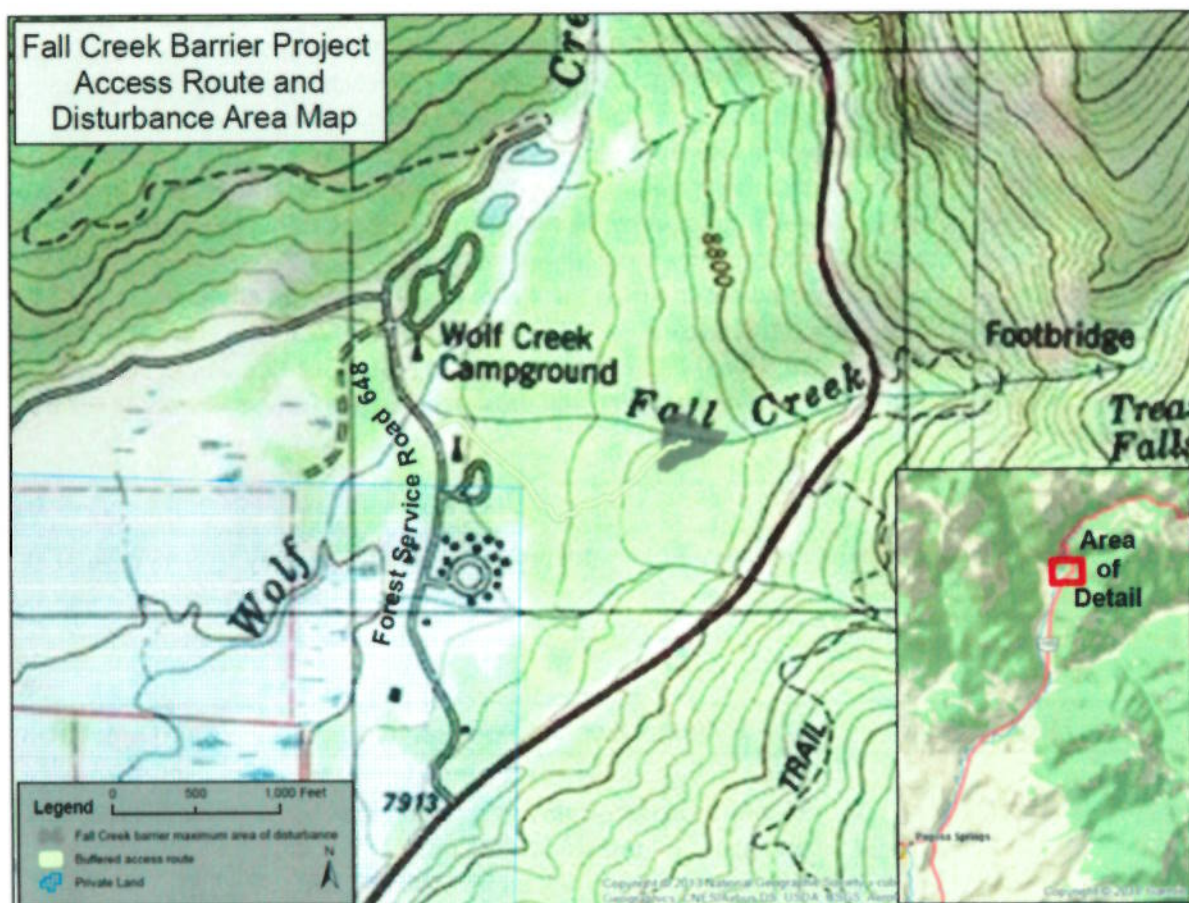
### Design Elements

The following design elements are incorporated into the proposed action to ensure land management plan compliance:

**Table 1. Design elements**

Design Element Label	Design Element Description	Plan Component
Osprey Nest Protection	Project activities will not occur within 0.25 miles of an active osprey nest during the nesting period (April 1-August 31).	LRMP Table 2.3.2
Invasive Species Treatment	Post project monitoring for invasive species will occur. If invasive species are found in the project vicinity mitigation measures will occur as necessary	LRMP Standards 2.8.11 and 2.8.12 Guideline 2.8.18

## Project Maps



## Environmental Analysis

### National Forest Management Act (NFMA) - Land Management Plan Consistency

The pertinent specialists have reviewed the proposal, incorporating specific Design Elements listed above to ensure consistency with applicable land management plan (Forest Plan) direction. The following summarizes the analysis and conclusions supporting plan consistency.

**Botany:** There are no federally listed plant species or habitat in the project area. Therefore, there will be no effect to federally listed plant species. There are no Region 2 sensitive plant species habitat in the project area. Therefore, there will be no impact to Region 2 sensitive plant species. This project is consistent with Forest Plan direction related to botany.

**Cultural/Heritage:** No cultural resource sites or isolated finds were observed within the area of potential effect. Therefore, this project will have no effect to cultural resources as proposed and is consistent with Forest Plan direction.





**Engineering:** The fish barrier was designed and approved by the Colorado School of Mines. The diversion modification structure was designed by Natural Resource Conservation Service. Both structures are to be constructed and built to conform to Forest Service specification and requirements and are consistent with Forest plan direction.

**Fisheries:** There are no federally listed, proposed fish species or designated critical habitats that are known or expected to occur in the project area. Habitat is present for one Forest Service sensitive species (Colorado River cutthroat trout (CRCT)). LRMP direction was considered for CRCT and project activities will benefit San Juan Lineage cutthroat trout (a sub species of CRCT).

**Fuels:** This project poses no concerns or effects to fuels management.

**Hydrology:** Impacts to water resources are not expected and the project is consistent with Forest Plan direction as well as the Clean Water Act.

**Lands and Special Uses:** Modification to the diversion structure will need to be authorized through a special use authorization. The project is consistent with Forest Plan direction.

**Minerals:** The project will have no effect on geologic or mineral resources.

**Range:** The project will have no effect on range management attributes or activities.

**Recreation:** The Recreation Opportunity Spectrum (ROS) for the area is defined in the Forest Plan as semi-primitive non-motorized. This project will have no impact on this ROS and is therefore consistent with Forest Plan direction related to recreation.

**Scenic Resources:** The project will have a negligible effect on scenic resources and will therefore remain consistent with the scenic integrity objectives established in the Forest Plan.

**Soils:** The project will have short-term and localized impacts on soil resources. Reseeding of banks with appropriate grass seed and willows, and erosion control matting and wattles will minimize impacts to soils. The localized, short-term nature of the impacts and revegetation of disturbed areas ensures the project will remain consistent with Forest Plan direction.

**Silviculture:** The project will have no effect on forestry resources.

**Special Management Areas:** The project is not within any Special Management Areas.

**Wildlife:** There are no federally listed or proposed wildlife species or designated critical habitats known or expected to occur in the project area. Habitat is present for seven Region 2 sensitive wildlife species (American marten, hoary bat, northern goshawk, olive-sided flycatcher, northern leopard frog, western bumblebee and Monarch butterfly). Forest Plan direction was considered for all sensitive species that have habitat in the project area and the project was found to be consistent with this direction.

**Other Resources:** NA

**Table 2. Applicable project file documentation to support land management plan compliance**

Supporting Documentation	File Name(s) / Link
Biological Evaluations	Wildlife and Fish BE and Botany BE found in the project record

**Other Law, Regulation and Policy Consistency**

The following laws, regulations, or policies pertinent to this project include:

**Clean Air Act**

Use of heavy equipment during project activities is expected to have negligible impacts to air quality based on limited scope, small scale, and short-duration of project activities.

*Supporting Project Documentation***Table 3. Applicable project file documentation to support Clean Air Act compliance**

Supporting Documentation	File Name(s) / Link
n/a	

**Clean Water Act**

The project complies with the Clean water act. There are wetlands, floodplains, and municipal supply watersheds in the project area, but no adverse effects are anticipated.

*Supporting Project Documentation***Table 4. Applicable project file documentation to support Clean Water Act compliance**

Supporting Documentation	File Name(s) / Link
Hydrology Report	Project record

**Endangered Species Act - Threatened, Endangered, Proposed and Candidate Species and Critical Habitat**

No T&E species, habitat, or Critical Habitat are present in the project area.

**Table 5. Threatened, endangered, proposed or candidate species and critical habitat effect determinations**

Species/Habitat	Status	Proposed or Designated Critical Habitat Present?	Determination	Brief Rationale (or refer to other project documentation)
n/a				

NE – no effect; NLAA – may affect, not likely to adversely affect; LAA – may affect, likely to adversely affect; No Jeopardy – not likely to jeopardize the continued existence or adversely modify critical habitat

*Supporting Project Documentation***Table 6. Applicable project file documentation to support Endangered Species Act compliance**

Supporting Documentation	File Name(s) / Link
Biological Evaluations	Wildlife and Fish BE and Botany BE found in the project record

**Sensitive Species (FSM 2670)**

The table below shows only those species known to occur in the project area or with habitat in the project area.

**Table 7. Sensitive species impact determinations**

Species	Determination*	Rationale
Colorado River cutthroat trout, American marten, hoary bat, northern goshawk, olive-sided flycatcher, northern leopard frog, western bumblebee and Monarch butterfly.	MIIH	Some individuals may be impacted, however based on the small scope, scale and duration of the disturbances associated with this project, effects to species are expected to be negligible.

NI – no impact; MIIH- may impact individuals or habitat, but will not likely contribute to a trend towards federal listing or loss of viability to the population or species; WIFV - will impact individuals or habitat with a consequence that the action may contribute to a trend towards federal listing or cause a loss of viability to the population or species

*Supporting Project Documentation***Table 8. Applicable project file documentation to support agency sensitive species compliance**

Supporting Documentation	File Name(s) / Link
Biological Evaluations	Wildlife and Fish BE and Botany BE found in the project record

**Special Management Areas (for example, Wilderness, Roadless, Wild and Scenic Rivers, etc.)**

The project is not within any special management areas.

**Table 9. Special management area compliance determinations**

Management Area Type	Applicable Law / Regulation to Demonstrate Compliance With	Rationale for Compliance
n/a		

*Supporting Project Documentation***Table 10. Applicable project file documentation to support special management area compliance**

Supporting Documentation	File Name(s) / Link
n/a	

**National Historic Preservation Act – Section 106 Review**

Per Section 106 of the National Historic Preservation Act (NHPA) and all other applicable state and federal laws and regulations regarding the identification and management of cultural resources, a Class III (intensive) pedestrian survey was completed for the entire proposed project area. No cultural resource sites or isolated finds were observed within the area of potential effect. Therefore, this project will have no effect to cultural resources as proposed.





No historic properties affected - 36 CFR 800.4(d)(1). Section 106 Review has been completed for the project area and no National Register eligible cultural sites were found.

#### *Supporting Project Documentation*

**Table 11. Applicable project file documentation to support NHPA compliance**

Supporting Documentation	File Name(s) / Link
Cultural Report	Cultural report found in the Project record

#### **Government to Government Consultation (EO 13175)**

The responsible official identified the following regarding Government to Government consultation:

Government to Government Tribal consultation completed

#### *Comments*

The project was listed in the SOPA which is mailed to tribes quarterly. No cultural resources were found and no cultural concerns were raised.

#### *Supporting Project Documentation*

**Table 12. Applicable project file documentation to support Tribal consultation compliance**

Supporting Documentation	File Name(s) / Link
n/a	

#### **Relevant Executive Orders**

The responsible official determined the proposal complies with the following Executive Orders, which were deemed relevant based on the nature of the proposal.

**EO 11988, Floodplain Management** – requires determination of action occurring in a floodplain, using HUD floodplain map or more detailed map if available.

There are floodplains or flood-prone areas in the project area, but no adverse effects are anticipated

**EO 11990, Protection of Wetlands** – avoid actions within wetlands unless there are no practical alternatives, and the action includes all practicable means to minimize harm to wetlands.

There are wetlands in the project area, but no adverse effects are anticipated

**EO 13007, Indian Sacred Sites** – avoid adversely affecting the physical integrity of these sites.

No cultural resource sites or isolated finds were observed within the area of potential effect. Therefore, this project will have no effect to cultural resources as proposed.





**EO 13175, Consultation and Coordination with Indian Tribal Governments** - agencies consult with Indian tribes and respect tribal sovereignty as they develop policy on issues that impact Indian communities.

No cultural resource sites or isolated finds were observed within the area of potential effect. This project is listed on the Forest SOPA provided to all Tribal partner governments. Additional government-to-government consultation was not initiated for this proposed undertaking.

**EO 13112, Invasive Species** – prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause.

Post project monitoring for invasive species will occur. If invasive species are found in the project vicinity mitigation measures will occur as necessary.

**EO 13186, Migratory Birds** – identify actions that may have a measurable negative effect on migratory bird populations.

Habitat is present for one migratory bird species, rufous hummingbird as identified in FWS IPaC list dated April 19, 2021. Minor short-term impacts to habitat and habitat components and disturbance associated with barrier and diversion modification structure activities are expected. Impacts are limited in scope and scale and will not affect viability for this species.

### Extraordinary Circumstance Determinations

Pertinent specialists have reviewed the proposal and made the following determinations with regards to degree of effects for the resource conditions considered:

**Table 13. Resource conditions considered for extraordinary circumstance determinations**

Resource Conditions Considered for Extraordinary Circumstances	Is there a degree of potential effect that raises uncertainty over its significance? Briefly explain.
Federally listed threatened or endangered species, designated critical habitat, and Forest Service sensitive species	<b>Botany:</b> NO, there is no uncertainty Rationale for yes/no: No TES plant species or habitat are present in the project area <b>Fisheries:</b> NO, there is no uncertainty Rationale for yes/no: Some individual sensitive fish species may be impacted, however based on the small scope, scale and duration of the disturbances associated with this project, effects to species are expected to be negligible. No TE fish species or habitat are present in the project area.



Resource Conditions Considered for Extraordinary Circumstances	Is there a degree of potential effect that raises uncertainty over its significance? Briefly explain.
	<b>Wildlife:</b> NO, there is no uncertainty Rationale for yes/no: Some individual sensitive wildlife species may be impacted, however based on the small scope, scale and duration of disturbances associated with this project, effects to species are expected to be negligible. No TE wildlife species or habitat are present in the project area.
Floodplains, wetlands, or municipal watersheds	NO, there is no uncertainty Rationale for yes/no: No adverse impacts to wetlands, floodplains, or municipal watersheds are anticipated. Project is in compliance with SJNF Forest Plan and applicable laws and regulations.
Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas	N/A, not present Rationale for yes/no: Type here
Inventoried roadless areas	N/A, not present Rationale for yes/no: Type here
Research natural areas	N/A, not present Rationale for yes/no: Type here
American Indians and Alaska Native religious or cultural sites	N/A, not present Rationale for yes/no: Type here
Archaeological sites, or historic properties or areas	N/A, not present Rationale for yes/no: No archaeological sites or historic properties or areas were found in the project area so there will be no effect to cultural resources.

## Supporting Project Documentation

Table 14. Applicable project file documentation to support NEPA compliance

Supporting Documentation	File Name(s) / Link
See project record for supporting documentation	





## Agencies, Organizations and Persons Contacted

The responsible official contacted the following interested and affected agencies, organizations, and persons about this project: Private property owners adjacent to the project area that also hold water rights in the ditch where the diversion modification is proposed, Colorado Parks and Wildlife and Trout Unlimited, and internal resource specialists. The project was also listed in the SOPA in April, 2021; no comments were received.

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